

other services to be considered as public interest programming.¹⁶

2. National Educational Programming Supplier

PRIMESTAR submits that, just as the non-profit corporation could determine criteria for public interest programming, it also could certify organizations as educational programmers and establish objective criteria for DBS providers to use in making their own such determinations. At the outset, PRIMESTAR concurs with the SBCA's view that the Commission, at least, should designate PBS and the National Cable Satellite Corporation (C-SPAN) as educational programmers.

D. Direct Cost

Section 25(b)(4) of the 1992 Cable Act implements a "pricing structure that was devised to enable national educational programming suppliers to utilize [a DBS provider's] reserved channel capacity." As a preliminary matter, PRIMESTAR submits that the Commission's rules should make clear that this provision is applicable only to that capacity which DBS providers choose to make available to educational programmers, and not to other programmers whose programming may satisfy the Section 25(b)(1) public interest

¹⁶ The Commission should make clear that programming offered on a subscription basis and programming underwritten by corporate sponsors may qualify as public interest programming if the relevant criteria are met. Further, the Commission's rules should not preclude the promotion of educational materials (e.g., books, teaching aids) associated with qualified public interest programming.

programming criteria. PRIMESTAR also reiterates that Section 25(b)(4) applies only to those circumstances under which an educational programmer leases capacity from a DBS provider. DBS providers may opt to pay a program supplier for the use of its public interest programming, or to arrange for promotional or other consideration, and should retain the flexibility to do so. Again, the goal should be to make public interest programming widely available, and DBS providers and programmers should not be confined to a single leased access model to achieve this worthwhile objective.

Further, PRIMESTAR urges the Commission to give a broad interpretation to the definition of "total direct costs of making such channel available" (Section 25(b)(4)(B)), in light of the fact that only 50 percent of those costs may be passed on to the educational programmers as part of the "reasonable prices, terms and conditions, as determined by the Commission."

In establishing rates to be charged to educational programmers, DBS providers should be able to incorporate the costs of launching and distributing DBS services. The "total direct costs of making such channel available" would include all the reserved-channel pro-rated costs, including financing and tax costs, of constructing, insuring, launching, controlling, tracking and maintaining the satellite and its ground-station links, along with signal encryption, compression and costs related to delivery of programming to the uplink site. General administrative and marketing would

not be included. PRIMESTAR, however, concurs with the SBCA's position that research and development costs should be included as direct costs and not general administrative costs. Because the direct costs vary widely among DBS providers, the FCC should not seek to impose any uniform tariff requirements.

To the extent that satellite capacity lessees such as PRIMESTAR assume the responsibility for the reserved circuits (as opposed to the satellite operator), the per-circuit costs passed on to such lessees through their leases of satellite transponders would have to be ascertained and added to additional reserved circuit pro-rated costs incurred by PRIMESTAR and other lessees in coordinating and uplinking their programming to the satellite. Thus, it is the circuit lessee's costs, service and lease charges, not the operator's costs, which are relevant for the 50 percent calculation under the model where the obligations are being fulfilled by the lessee.

E. Phase-In Period

PRIMESTAR believes that a reasonable phase-in period is necessary to incorporate the obligations imposed upon DBS providers by Section 25. The creation of the non-profit corporation, establishment of programming criteria, selection of a board and staff and initiation of administrative functions will take time. Moreover, there may exist a need to renegotiate certain program contracts. Finally, DBS providers should be afforded ample opportunity to select qualified

programming, make necessary channel adjustments, and notify their subscribers.

V. CONCLUSION

For the foregoing reasons, the Commission should craft rules applying the DBS public service obligations contemplated in Section 25 consistent with the positions stated herein and in the Further Comments submitted by the SBCA.

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